

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 10-46

March 26, 2010

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Bridge Program for the Position of Field Examiner

Pursuant to Article 7 of the extended collective-bargaining Agreement (Agreement) between the General Counsel and the National Labor Relations Board Union covering Field office support staff employees, the Agency has agreed to announce each year, by a national posting, three Field Examiner Bridge Program positions. This memorandum is the national posting for Fiscal Year 2010. While applications will now be submitted to, and processed in, the Division of Operations-Management, rather than in individual Regions, the Associate General Counsel for Operations-Management will continue to be the selecting official. Evaluation and selection of candidates for the Bridge Program will be governed by the application of Article 7, Section 5(d), of the extended Agreement covering Field office support staff employees in conjunction with Section 3 ("Evaluation and Selection") of the "Bridge Program for Labor Management Relations Examiner Positions, General Schedule Positions, GS-4, 5, 6 and 7," a copy of which has been posted with this memorandum. Successful applicants will serve in the Regions in which they currently work. Because a trainee is required to take 30 semester hours of college courses during the 3-year-training period, any selection(s) will be made by July 31, 2010, so that selectee(s) may register for appropriate courses in the fall college semester.

The Selection Process

Enclosed are memoranda announcing the program that should be distributed to all support staff employees in the Region and posted on the office bulletin board along with a copy of the program. **Employees are to submit their applications to the Division of Operations-Management, Attention: Harry Jones, Assistant General Counsel, Labor and Employee Relations, by close of business on April 30, 2010.** A determination will then be made as to which of the applicants meet the basic eligibility requirements set forth on pages 1 and 2 of the Bridge Program.

Once basic eligibility is determined, the respective Regions where the eligible applicants are located will be asked to forward to Operations-Management copies of the three most recent appraisals prepared for each eligible applicant. If an appraisal has not previously been prepared for an applicant who meets the basic eligibility requirements for the Bridge Program, the appropriate supervisor should complete it. In addition, an "Appraisal of Potential Based on Job Elements" (copy attached) will need to be completed for each eligible applicant by the supervisor or manager who is most

familiar with the applicant's qualifications. Personal interviews will then be conducted through videoconferencing with eligible applicants. Based upon the interviews, the applicant appraisals, and taking into consideration the five factors (work experience, education and training, special achievement, overall performance, and potential), listed in Section 3(b)(1), page 3, of the Bridge Program, a determination will be made as to whether any of the applicants will be recommended for selection as a Bridge Program participant.

Grade Level at Assignment to the Program and Promotion During Training

If the person selected for the program is currently in grades GS-5, -6, or -7, he or she will be assigned to the program at his or her present grade level. An individual at GS-8 or above will enter the program at GS-7, but pay retention will apply to such a person.

Trainees who enter the program at one or more grade levels below that of the GS-7 target position will be temporarily promoted to the next higher grade after successful completion of each full year in the program up to and including grade GS-7. Thus, for example, a trainee who enters the program at GS-6 is eligible for a temporary promotion after successful completion of his or her first year. The individual would remain at GS-7 during the remainder of the program. Upon successful completion of the third year, the individual would be permanently promoted or reassigned to a GS-7 Field Examiner position. On the other hand, if an employee at the GS-5 level is selected for the program, that individual would, depending on his or her progress, be eligible for a temporary promotion to GS-6 at the end of the first year and to GS-7 at the end of the second year. The individual would remain at GS-7 during the third year of the program. Upon successful completion of the third year, the trainee would be permanently promoted or reassigned to the GS-7 Field Examiner position.

Employees who have less than 12 months in grade as a GS-7 while in the Bridge Program are eligible for promotion to GS-9 after 12 months in grade as a GS-7 Field Examiner. Employees who have 12 months in grade as a GS-7 while in the Bridge Program are eligible for promotion to GS-9 after 6 months in grade as a GS-7 Field Examiner. Employees who have 24 months in grade as a GS-7 while in the Bridge Program are eligible for promotion to GS-9 after 3 months in grade as a GS-7 Field Examiner. Employees who took a downgrade to GS-7 to enter the program and have served 36 months in the program as a GS-7 will immediately upon conversion to GS-7 Field Examiner be promoted to GS-9. Subsequent promotions will follow the Field Examiner merit promotion plan that establishes the journeyman level for Field Examiners at GS-13.

Section 4(c) of the program provides that each trainee will, at Agency expense, take 30 semester hours of college courses. The Regional Director, or his or her designee, will plan the curriculum with the trainee. During the first year, the trainee must take (if available) 3 semester hours in Speech/Oral Communication, 6 semester hours in English Composition or college-level Writing, and 3 semester hours in Logic; and will be encouraged to take 3 semester hours in Accounting. After the first year, the remaining semester hours must be from among those listed in the Single Agency Qualifications Standard, with the understanding that any of the above-listed credits, including Accounting, which were not satisfied in the first year of the program must be

satisfied in the second year of the program. (Exception: A trainee who has already successfully completed the above college-level courses prior to entry into the program may be required to take an appropriate number of other courses while in the program.) The educational institution, the curriculum, and the cost assumed therewith, and schedule of courses, must be approved in advance by the Regional Director in consultation with the Division of Operations-Management and the Human Resources Branch. Unless the required course is available only during the day, it should ordinarily be taken at night. If a trainee receives a grade of less than a "C" in any course, this will be taken into consideration in determining whether the trainee should continue in the program.

On-the-Job Training

A training plan must be specifically developed for each trainee. Enclosed is a typical training plan covering the normal 3-year program. Because many of the individuals entering this program will have had little preparation for the type of professional position that they are seeking, it is absolutely essential that the training and development of the participant be given the closest possible attention and supervision.

As set forth in the attached typical training plan, the trainee will perform support staff duties up to 40 percent the first year. The second and third years will be devoted entirely to on-the-job Field Examiner training; therefore, no support staff duties will be assigned. On-the-job training is lighter during the first year but is balanced with heavier college course work.

The trainee will retain his or her support staff position throughout the training program. However, during the second and third years consideration will be given to detailing or temporarily promoting another employee into the position.

Evaluation During the Program by Management

Ninety days after the trainee has been assigned to the program, the supervisor should prepare a written evaluation of the trainee's developmental needs. In addition, the specifically tailored 3-year training plan should be generally described and the projected 3-year program of college courses set forth. A copy of this evaluation should be forwarded to the Assistant General Counsel or Deputy.

In accordance with Article 7 of the extended Agreement, at the end of the first 3 months, and quarterly thereafter, except on the employee's anniversary date in the program, the supervisor should prepare a quarterly written performance evaluation of the trainee's work and progress. A copy of the evaluation should be given to and discussed with the trainee. A copy should also be forwarded to the Assistant General Counsel or Deputy.

On an annual basis, the employee is to be provided an Annual Performance Appraisal in accordance with Article 7 of the extended Agreement.

Evaluation to be Prepared by the Trainee

A trainee under this program is also required to make certain written evaluations. Thus, a trainee is required to furnish grade transcripts at the completion of any college course work and is required to make a written assessment, on a quarterly basis, of his or her development. A copy of the course work transcripts and quarterly developmental evaluations should be transmitted to the Assistant General Counsel or Deputy.

Action Upon Failure to Meet Standards

When the Associate General Counsel, Division of Operations-Management, determines that a trainee has failed to meet performance requirements, the trainee will, depending on the availability of suitable position vacancies, be laterally reassigned or returned to his or her former position or to a similar position with equivalent status and grade. The trainee may be placed in a position that carries a lower grade than his or her former position when an action returning the trainee to his or her former grade would constitute a violation of the merit promotion system.

The Bridge Program provides a meaningful way for support staff employees to change careers and perform professional work of a particularly complex and challenging nature. Consequently, great care will be given to the evaluation of applicants to determine whether any have the ambition and the ability to assume the responsibilities of a Field Examiner and, in due course, achieve the full performance level. Of course, if an individual is selected, we have an affirmative duty to provide training and development with care and attentiveness so as to assist the trainee in reaching the Field Examiner position.

Please distribute this memorandum and the attachments to all support staff employees in the Region and place a copy on your office bulletin board. Any questions should be directed to your AGC or Deputy.

/s/
R. A. S.

Attachments: Bridge Program and Training Plan
Appraisal of Potential Based on Job Elements
Application for Bridge Program

cc w/ Attachments: Carol Arbogast, Director of Human Resources

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM

TO: All Field Support Staff Personnel

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Bridge Program for Position of Field Examiner

Pursuant to Article 7 of the extended collective-bargaining Agreement (Agreement) between the General Counsel and the National Labor Relations Board Union covering Field office support staff employees, the Agency has agreed to announce each year, by a national posting, three Field Examiner Bridge Program positions. This memorandum is the national posting for Fiscal Year 2010. As in the past, selection for the program may be affected by budgetary restrictions. While applications will now be submitted to, and processed in, the Division of Operations-Management, rather than in individual Regions, the Associate General Counsel for Operations-Management will continue to be the selecting official. Evaluation and selection of candidates for the Bridge Program will be governed by the application of Article 7, Section 5(d), of the extended Agreement covering Field office support staff employees in conjunction with Section 3 ("Evaluation and Selection") of the "Bridge Program for Labor Management Relations Examiner Positions, General Schedule Positions, GS-4, 5, 6 and 7," a copy of which is posted with this memorandum. Successful applicants will serve in the Regions in which they currently work. Because a trainee is required to take 30 semester hours of college courses during the 3-year-training period, any selection(s) will be made July 31, 2010, so that selectee(s) may register for appropriate courses in the fall college semester.

The training will last 3 years with the possibility that it may be extended for 1 year, if necessary. Before completion of the training period, trainees are required to have completed 30 semester hours of selected college courses which will be paid for by the Agency. Unless the courses are available only during the day, they should be taken at night.

The Bridge Program provides that the trainee will perform support staff duties up to 40 percent of the time during the first year. The remainder of the workweek will be devoted to on-the-job Field Examiner training. During the second and third years of the program, 100 percent of the trainee's time will be devoted to on-the-job Field Examiner training.

Employees who wish to be considered for the program should submit their applications to the Division of Operations-Management, Attention: Harry Jones, Assistant General Counsel, Labor and Employee Relations, by close of business on April 30, 2010.

Some of the program's more important provisions are outlined below. However, employees should read the complete program that has been placed on the Region's bulletin board.

Eligibility Requirements

To be eligible for consideration, employees must currently be at grade GS-5 or above and be serving in a career or career-conditional appointment. The length of required qualifying experience varies with the entry level of the trainee position:

52 weeks experience equivalent to GS-4 for GS-5,
52 weeks experience equivalent to GS-5 for GS-6, and
52 weeks experience equivalent to GS-6 for GS-7.

Substitution of appropriate education for experience may be made as outlined in OPM Qualification Standards.

Entry Level

If a successful candidate is currently serving at GS-5, -6, or -7, he or she will be assigned to the program at his or her present grade level. If a successful candidate is currently serving at the grade level GS-8 or above, he or she will enter the program at GS-7. Pay retention will be applied if a successful candidate is above the GS-7 level.

Promotions

A trainee who enters the program at one or more grade levels below GS-7 will be temporarily promoted to the next higher grade level after successful completion (i.e., attaining the required performance ratings) of each full year in the program up to and including grade GS-7. Thus, for example, if an employee at the GS-5 level is selected for the program, that individual would, depending on his or her progress, be eligible for a temporary promotion to GS-6 at the end of the first year and to GS-7 at the end of the second year. The individual would remain at GS-7 during the third year of the program. Upon successful completion of the third year, the trainee would be permanently promoted or reassigned to a GS-7 Field Examiner position. Employees who have less than 12 months in grade as a GS-7 while in the Bridge Program are eligible for promotion to GS-9 after 12 months in grade as a GS-7 Field Examiner. Employees who have 12 months in grade as a GS-7 while in the Bridge Program are eligible for promotion to GS-9 after 6 months in grade as a GS-7 Field Examiner. Employees who have 24 months in grade as a GS-7 while in the Bridge Program are eligible for promotion to GS-9 after 3 months in grade as a GS-7 Field Examiner. Employees who took a downgrade to GS-7 to enter the program and have served 36 months in the program as a GS-7 will immediately upon conversion to GS-7 Field Examiner be promoted to GS-9. Subsequent promotions will follow the Field Examiner merit promotion plan that establishes the journeyman level for Field Examiners at GS-13. We look forward to receiving applications from interested employees.

R. A. S.

Bridge Program Individual Training Plan

Name:

Present Job Title:

Series and Grade:

Entry into Training:

Duration of Training: 3-year program

Objective: To develop, through planned reading, formal training, discussion and work experience, Bridgee's ability to perform the duties of a Labor Management Relations Examiner related to processing representation petitions and unfair labor practice charges, e.g., processing of petitions and charges, holding of conferences and elections, legal research, interviewing witnesses and obtaining relevant evidence; analysis of facts, procedures and law in representation and unfair labor practice cases; preparation of oral and written reports, forms and other documents.

Phase One (part 1): 1st and 2nd Weeks

I. Program Orientation – During the first session, the trainee meets with his/her supervisor and is given a detailed orientation on the provisions of the “bridge program” and the mechanics of its operation. The trainee receives information regarding the frequency of her participation in the program (i.e., no less than 3 days per week the first year, 5 days per week the second and the third years), frequency of evaluations (quarterly), the standard of performance the trainee is expected to achieve at each stage of the program, eligibility for promotion, college course work, and other aspects of the program regarding which the trainee may have questions. This session should also form a foundation for the development of a training program tailored to the specific needs of the trainee, based on the typical program, which follows.

Depending on the needs of the trainee, the Agency will pay for the following required college course work: 3 semester hours in Speech/Oral Communication, 6 semester hours in English Composition or College Level Writing, 3 semester hours in Logic (all to be taken during the first year of the program), and 3 semester hours in Accounting (preferably to be taken during the first year of the program). The remaining semester hours must be in one of the specialized areas, the substance of which is directly related to the work of the Agency (political science, government, economics, industrial relations, labor relations, personnel administration, business administration, accounting or labor law).

Tuition, books and fees will be paid by the Agency under the Government Employee Training Act and in accordance with the provisions of the Agreement between the General Counsel of the National Labor Relations Board and the NLRBU covering Field support staff employees. The trainee will be required to submit reports on his/her progress at the end of each grading period. Depending on the needs of the office, the trainee will perform support staff duties up to 40 percent of the time during the first year of the program.

II. Orientation to the Mission of the Agency and Functions of a Field Examiner –

The remaining sessions of the orientation broaden the trainee's view of the National Labor Relations Act, the Agency, the operations of the Regional Offices, and the role played by the Labor Management Relations Examiner.

The following training material and orientation to that material will be provided or made available to the trainee:

1. www.nlrb.gov – Board and ALJ decisions; GC, OM and Advice memos; updated casehandling manuals and other publications; electronic filing (E-Gov); latest NLRB Annual Report
2. SurfBoard Intranet – Especially Westlaw, Shepherds, training programs and resources, Human Resources Branch materials, GC and OM memos, etc.
3. Microsoft Outlook Bulletin Boards
4. Region's library materials
5. The National Labor Relations Act
6. The Board's Rules and Regulations and Statements of Procedure
7. NLRB Organization and Functional Chart
8. NLRB Casehandling Manuals – Parts 1, 2, 3
9. A Guide to Basic Law and Procedures Under the NLRA
10. Representation Case Flow Chart
11. Set of Current NLRB forms – as needed
12. Reading assignments
13. A schedule of training
14. Agreement between the General Counsel and the NLRB Union (Professional Unit)
15. An Outline of Law and Procedure in Representation Cases – including Jurisdictional Guide
16. Hearing Officer's Guide

The historical background of the development of labor management relations and legislation preceding the National Labor Relations Act will be discussed. The instructor will assign reading and discuss the following topics.

A. The NLRB and its Organization

A. Development of National Labor Relations Act

1. National Industrial Recovery Act
2. Wagner Act, N.L.R.B v. Jones and Laughlin Steel Corp., 301 U.S. 1 (1937)
3. Taft-Hartley
4. Landrum-Griffin
5. Postal Reorganization Act of 1970
6. Health Care Institution Amendments

B. Role of Other Agencies in Employment Matters

1. Department of Labor
 - (a) Wage and Hour – Fair Labor Standards Act, Family and Medical Leave Act, Service Contract Act
 - (b) Occupational Safety and Health Administration – OSH Act
 - (c) Office of Labor-Management Standards – Landrum-Griffin Act
 - (d) Employee Benefits Security Administration – COBRA, ERISA
 - (e) Office of Federal Contract Compliance Programs - Davis-Bacon Act
 - (f) Office of Workers Compensation Programs
 - (g) Office of Disability Employment Policy – Americans with Disabilities Act
2. FMCS
3. EEOC – Title VII, Age Discrimination in Employment Act, Equal Pay Act
4. United States Attorney
5. National Mediation Board – Railway Labor Act
6. Civil Service Reform Act – OPM, MSPB, FLRA
7. State(s) office dealing with unemployment

8. State(s) office dealing with labor relations

B. Orientation to the Agency

A. The Board – Members, staffs, Executive Secretary's Office, Solicitor,
Representation Appeals, Information, Inspector General. OCIO

B. Division of Judges

C. General Counsel

(a) Washington

1. GC and Deputy GC

2. Division of Operations-Management

(a) Associate and Deputy Associate General Counsel

(b) District __ – AGC and DAGCs

3. Division of Advice

(a) Regional Advice Branch

(b) Injunction Litigation Branch

(c) Research and Policy Planning Branch

4. Division of Enforcement Litigation

(a) Appellate and Supreme Court Branch

(b) Office of Appeals

(c) Contempt Litigation and Compliance Branch

(d) Special Litigation Branch

5. EEO

6. Division of Administration

(a) Security Branch

(b) Library and Administrative Service Branch

(c) Human Resources Branch

(d) Procurement and Facilities Branch

(e) Budget Branch

(f) Finance Branch

(b) Regional Office Organization

1. Professional hierarchy

2. Support staff hierarchy

3. Relationship and dealings with the public

(a) Information Officer duties

(b) Press and media inquiries

(c) Freedom of Information Act

(d) Parties, attorneys and witnesses

Phase One (part 2): 3rd week to 52nd week

Under close supervision, and with experienced Board agents as mentors, the trainee is exposed to certain aspects of representation and unfair labor practice case handling.

I. Representation Cases - The trainee first observes, then assists, and finally conducts secret ballot elections and processes petitions. Elections and consent conferences are conducted with an experienced agent or supervisor present for advice and assistance. Depending on development during the year, the trainee may become solely responsible for certain of these functions. Assignments progress from petitions involving small units with no anticipated issues to larger and somewhat more complex bargaining units. During this period, the trainee will receive instructions and guidance in the use of research tools and in the preparation of written reports with respect to initial processing of petitions. The subject matter for study and discussion during this period is as follows:¹

A. Objectives

- (a) NLRB function in determination of representatives
- (b) Importance of expeditious handling in Representation matters; time targets

B. Procedure in Representation Cases

1. Preparation

- (a) The Petition - who may file, types: RC, RD, RM, UD, UC, AC, VR
- (b) Assistance in preparing petition
- (c) Information required
- (d) Docketing of petitions and amended petitions - Filing date, responsibility when filed in field.

2. Review information on the petition – names and contact information for parties and potential intervenors, nature of business, number of employees, unit, case type and number.

3. Review information on Notice of Hearing

4. Initial communications with parties

- (a) Fax petition, cover letter from RD, Notice of Hearing, etc. to parties. Intervenor's letters
- (b) Notice to other interested parties (joint or single employers, multi-employer associations, potential intervenors)

5. Check CATS, prior and current related ULP or Representation cases; possible additional interested parties, including intervenors - incumbents, prior representatives, organizing within last 2 years

6. Blocking Charges

- (a) Type I – only interferes with employee free choice - Request to Proceed?
- (b) Type II – affects petition, showing of interest, precludes or conditions the existence of QCR, or taints incumbent's subsequent loss of majority status
- (c) Exceptions to blocking charge policy
- (d) Resumption of processing of blocked petitions
- (e) Taint determination where filing of decertification petition precedes ulp charge – Truserv (OM 07-69). Nexus between ulp and disaffection? If not, is blocking appropriate – Saint Gobain. See also OM 07-24 re bargaining orders in 8(a)(5) settlement agreements.

¹ In addition to these suggested reading topics, the supervisor will consider appropriate reading assignments in The Developing Labor Law.

7. Showing of Interest
 - (a) What constitutes adequate showing – types, designation legend, signatures, dates, currency, timeliness, percentage
 - (b) Check against payroll for petitioned-for unit, if provided
 - (c) Report on Investigation of Interest (Form NLRB-4069)
 - (d) Attempts to revoke
 - (e) Investigation of claims of fraud or forgery
8. Preliminary investigation
 - (a) Timing of start of investigation, time targets
 - (b) Notification of interested parties
 - (c) Method of investigation - Office or telephone conference
 - (d) No Raiding Agreements – Articles XX, XXI
 - (e) Survey/checklist of possible issues to be met. Research and other preparations for same.
 - (f) Check employer name and state on State's Secretary of State website. Check employer on internet.
9. The investigation
 - (a) How you start – what you say – how you complete – if party indecisive schedule hearing and keep working toward consent or stipulated election
 - (b) Mechanics of the conference
 - (1) Board agent control of the conference
 - (2) Impartiality
 - (3) Sizing up parties
 - (4) Stating purpose of conference
 - (5) Obtaining agreement on non-controversial matters
 - (6) Narrowing and classifying disputed issues
 - (7) Techniques of successful conference
 - (c) Securing required information on procedural and substantive problems
 - (1) Commerce information - legal name, state of incorporation, facts, conclusion
 - (2) Other interested parties
 - (3) Showing of interest – dealt with ex parte – not in open conference. Responding to inquiries as to adequacy – Extent - Full; Intervenor's; Participating
 - (4) Labor relations history – certification year, election year or contract bar
 - (5) Existence of question concerning representation
 - (6) Appropriateness of unit – scope and composition
 - (a) Phraseology of unit description
 - (b) Determine job titles; numbers in each position; locations
 - (c) Determine classifications, locations in dispute
 - (d) Distinction between unit and eligibility questions
10. Election Agreements
 - (a) Distinction between Consent, Full Consent (OM 05-40) and Stipulated Election Agreements
 - (1) Completion
 - (2) Parties' full and complete names
 - (3) Commerce
 - (4) Dates, hours and places of election – on or off premises, away from locus of management authority. Location, date and time of count. Mail ballot language. Mixed mail-manual ballot language.

- (5) Ballot position if more than 2 choices
 - (6) Payroll period for eligibility
 - (7) Unit description; self-determination election voting group description and language; Sonotone language for professional and non-professional employees.
 - (8) Eligibility stipulations – Daniel formula, on-call employees, etc.
 - (9) Norris-Thermador eligibility agreements
- (b) Election order sheet – additional information
 - (1) Single or multiple polls, Notice and posting period
 - (2) Foreign language notices, ballots, interpreters needed
 - (3) Voter release method; schedule; self-release language on Notices?
 - (4) Strike in progress?
 - (5) Numbers of polling places and Board agents needed
 - (6) Scheduling of pre-election conference
 - (7) Determining number and identity of observers
 - (8) Need for voter identification?
 - (9) Need for separate lists for multiple polls
 - (10) Number/set-up of voting booths, ballot boxes, tables, chairs
 - (11) Instructions re distribution of Excelsior list
 - (12) Voting by Affidavit necessary?
 - (13) Instructions for Board agent challenges per election agreement?
 - (14) If Blocking Charge - Vote and Count, Vote and Impound or Cancel
- 11. Procedure where formal action is found necessary after investigation of petition –
 - (a) Data required to set up hearing – determining date and location of hearing
 - (b) Preparation of Report Recommending Issuance of Notice of Hearing
 - (c) Subpoena requests. Tropicana subpoenas.
 - (d) Pre-hearing motions
 - (e) Postponement requests
 - (f) Exploration of issues and pre-hearing research of known issues
 - (g) Use of Hearing Officer Guide
- 12. Regional Director and Board directed elections
 - (a) Arrangements, difference in setting up compared to election agreement – 25 to 30 days after DDE
 - (b) Checking with Representation Appeals if Request for Review of DDE
- 13. Conduct of Election
 - (a) Pre-election conference – Be on time or earlier – leave time to find the location – have map and/or scout it out in advance
 - (1) Check of eligibility list – Excelsior, Norris-Thermador or other final and binding agreements, DDE instructions re challenges, if any
 - (2) Presence of union agent(s) at voting place prior to election
 - (3) Campaign literature or notices near polling place
 - (4) Instruction of observers and their behavior; designation of observer forms
 - (5) Set up of voting place – booths, ballot box, flag
 - (6) Inspection of voting place and booths
 - (7) Responding to party inquiries about potential objectionable conduct, challenged ballots
 - (8) Official time
 - (b) The election
 - (1) Identification of voters
 - (2) Checking eligibility list

- (3) When to challenge
 - (4) Treatment of or attitude toward voters – dealing with problem observers, voters
 - (5) Observance of stipulated voting period even if all apparent voters already voted
- (c) Count of Ballots
 - (1) Disposing of challenges prior to count
 - (2) Void and valid ballots
 - (3) Possible segregation or impounding if too many challenges
 - (4) Tally sheet
 - (5) Tally of ballots
 - (6) Certification on conduct
- (d) Re-run elections
- (e) Runoff elections
- 14. Administrative disposition of positions
 - (a) Dismissal after investigation
 - (b) Withdrawals – with or without prejudice
 - (c) Disclaimers of interest; revocations of certifications

II. Unfair Labor Practice Cases - The trainee will observe experienced agents as they plan their investigations, interview witnesses, obtain other relevant evidence, analyze and evaluate evidence, research the law, present their reports and recommendations, and settle cases. As the trainee becomes familiar with the techniques involved, he or she becomes progressively more involved, gradually performing greater portions of the work until he or she is ready to investigate a charge. Earlier investigations by the trainee will be conducted in the presence of the supervisor or an experienced agent; later investigations will be conducted by the trainee alone, but with close supervision. The trainee may also observe the preparation for, and conduct of, unfair labor practice trials.

Reading and Discussion – The trainee will study the following topics:

I. Procedure

- (1) Charges – types, filing and service requirements, who may file, where to file, who to serve, where to serve, notices of appearance
- (2) Assignment of cases
- (3) Impact analysis; Time Targets; Overarching Goals
- (4) Preparing to investigate
 - (a) Review of information on the charge
 - (b) Check prior and currently pending related R and C cases
 - (c) Research apparent issues
 - (d) Be familiar with skip counsel issues
- (5) Investigation techniques
 - (a) organization of the Regional Office file and electronic case file
 - (b) filing and service of charge
 - (c) initial contacts with charging party, charged party – lack of cooperation
 - (d) Drafting correspondence to parties and third party witnesses
 - (e) Interviewing witnesses – employees, agents, supervisors, former agents and supervisors, third party witnesses, represented and unrepresented witnesses
 - (f) Face-to-face affidavits

- (g) Telephone affidavits
- (h) Questionnaires
- (i) Document requests; EAJA letters
- (j) Rebuttal evidence
- (k) Investigative subpoenas
- (l) Backpay and reinstatement investigation when there has been alleged loss of earnings and/or job – Instruct discriminatees on mitigation obligations – See Grosvenor Orlando – OM 08-54;
St. George Warehouse – GC 09-01
- (m) Section 10(b) of Act – Bryan Mfg. Co., 362 U.S. 611
- (n) Use of interpreters for witness interviews
- (o) Jurisdiction evidence
- (p) Agency and Supervisory evidence - Oakwood Healthcare – GC 07-05
- (q) Undocumented workers – Hoffman Plastics Compounds - GC 02-06
- (6) Regional determination
 - (a) Additional research, analysis and recommendation
 - (b) Legal Writing techniques –incorporate aspects of legal writing training
 - (c) Preparation of Agenda outline/FIR
 - (d) Oral presentation at agenda
 - (e) Preparation of agenda minute
 - (f) Consideration of mandatory Advice submissions (GC 07-11), nationwide case coordination issues (OM 09-39)
 - (g) Consideration of 10(j) [GC 07-01, OM 06-60]; first contract bargaining remedies [GC 08-08, 07-08 and 06-05, OM 09-54]; electronic posting [OM 06-82]; and foreign language notices in merit cases.
- (7) Implementation of Regional determination
 - (a) Settlement – formal, informal, non-Board or Complaint
 - (b) Withdrawal, short form dismissal or long form dismissal
 - (c) Conditional withdrawals
 - (d) Merit dismissals
 - (e) Collyer, Dubo (OM 08-74 re blocking charges); Spielberg deferral
 - (f) Drafting dismissal letters
 - (g) Drafting of Request for Advice
 - (h) Drafting comments on appeals

II. Section 7 of the Act

III. Employer and Union Unfair Labor Practices – Substantive Law

- (1) Section 8(a)(1) – Independent violations - interference, restraint and coercion
 - (a) Independent or Derivative; freedom of speech – Section 8(c)
 - (b) Threats of reprisal v. prophecy
 - (c) Solicitation of grievances, promises of benefit, withholding benefits
 - (d) Interrogation and polling, Johnnie's Poultry
 - (e) Surveillance and impression of surveillance
 - (f) Overly broad and discriminatorily promulgated or enforced rules - No solicitation, no distribution, bulletin boards, electronic mail (Register Guard), access rights of off-duty employees, non-employees, prohibiting discussion of wages, benefits, restrictions on buttons/insignia
 - (g) Statements of futility, bargaining from scratch
 - (h) Violence
- (2) Section 8(a)(1) – discrimination in terms and conditions of employment because of protected concerted activities

- (a) Strikes, work stoppages, safety protests, appeals to management, public agencies, media, political advocacy – GC 08-10 (Eastex v. NLRB)
- (b) Individual v. concerted activities
- (c) Unprotected activities – sit-down or intermittent strikes, breach of confidentiality, maliciously false statements and disparagement of employee.
- (d) Weingarten rights (Postal Service Weingarten cases – OM 09-33)
- (e) Unlawful lawsuits – BE&K – GC 08-01
- (e) Discharge of supervisor for refusing to commit ulps or refusal to falsely testify in a Board proceeding
- (3) Section 8(b)(1) (A) - restraint or coercion of employees in exercise of Section 7 rights
 - (a) Union rules proviso – Scofield v. NLRB
 - (b) Forms of restraint and coercion
 - (1) Violence or threats
 - (2) Mass picketing
 - (3) Illegal union security and employment practices
 - (4) Actions to compel strike participation
 - (5) Fines or other actions against non-members
 - (6) Restrictions on the right to resign membership
 - (7) Failure to honor revocation of check-off authorization, timing of revocation
 - (8) CWA v. Beck issues
 - (c) Duty of Fair Representation
 - (1) Owed to all in unit
 - (2) Breadth of union discretion in processing of grievances
 - (3) Discrimination based on race, age, sex, national origin, dissident activity, non-membership in union, or other unlawful consideration
 - (4) Gross negligence v. mere negligence
- (4) Section 8 (a) (3) and (4)
 - (a) 8(a)(3) - employee union membership, activities, sympathies;
 - 8(a)(4) – employee filing charges or giving testimony under the Act, or otherwise using Board processes
 - (b) Employer knowledge or mistaken belief (Burnup & Sims)
 - (c) Evidence of animus
 - (d) Nexus to retaliation by imposition of adverse employment action
 - (e) Timing
 - (f) Pretext
 - (g) Motivation
 - (h) Defenses
 - (i) Disparate or comparable treatment – comparison with past practices
 - (j) Condonation
 - (k) Lack of explanation, false reasons, shifting reasons
 - (l) Circumstances –e.g., use of guard escort in layoff for lack of work, layoff in midday or midweek contrary to practice
 - (m) Employer response to unemployment claim, unemployment hearing record and decision
 - (n) Extent of correlation between alleged discriminatory action and union supporters
 - (o) Economic defenses – other cost-cutting measures, examination of

books of account, etc.

(p) Forms of discrimination – Refusal to consider and/or hire (FES, Toering Electric – GC 08-04), discharge, layoff, constructive discharge, transfer, suspension, warning, other discipline, wage, hour or benefit

(5) Section 8 (b) (2) - To cause or attempt to causes an employer to discriminate

(a) Forms of violations

(b) Enforcement of unlawful union security requirements; Philadelphia Sheraton; Beck

(c) Hiring halls

1. Exclusive or non-exclusive hall – cba, by-laws, referral rules and records.

2. Facially valid referral rules?

3. Objective considerations for preferences in referral classifications?

4. Alleged failure or refusal to refer based on referral of others

5. Alleged discipline (suspension or removal from referral list by Union resulting in loss of work opportunities through referral)

At the end of Phase I, the trainee will be evaluated and a decision will be made regarding whether to proceed to Phase II. If both the on-the-job training and college course work have been satisfactory, the trainee will be evaluated and considered for promotion to the next higher grade level depending on his/her entry level, and training will continue on a full-time basis 5 days per week.

Phases II and III

In the second and third years of the program, the trainee will be required to complete the remaining course work to total 30 overall semester or equivalent quarter hours (to include accounting during the second year of the program if not taken during the first year of the program) in one of the specifically related fields of study (political science, government, economics, industrial relations or labor relations, personnel administration, business administration, accounting and labor law).

Work Experience: While continuing to participate in Representation case handling, the trainee will also be assigned more complex unfair labor practice cases.

A. Unfair Labor Practices: The trainee will study and may receive assignments in the following areas.

1. Section 8(a)(2) – Domination of or assistance to labor organizations
 - (a) “Company union” or dominated employee committee system v. independent Section 2(5) labor organization
 - (b) Recognition of minority union - good faith belief of majority status is no defense
 - (c) Recognition of majority union in context of organizing by rival union – Bruckner Nursing Home, 262 NLRB 955
 - (d) Executing new contract with incumbent despite petition filed by rival union – RCA Del Caribe, 262 NLRB 963
 - (e) Continuing recognition of incumbent despite filing of decertification petition – Dresser Industries, 264 NLRB 1088
 - (f) Voluntary recognition – Dana Corp., 341 NLRB 1283
 - (g) Labor-management committees and “dealing” – Electromation
 - (h) Unlawful assistance v. permissible ministerial aid
 - (i) Union as party to employer domination - 8(b)(1)(A) acceptance of recognition by minority union and 8(b)(2) if cba of parties contains a union security provision
 - (j) Remedial orders – withdraw and withhold recognition until certified; cease giving effect to cba provided no requirement to reduce wages or benefits
2. Section 8(a)(5) and Section 8(b)(3)
 - (a) Nature and extent of duty to meet and bargain in good faith
 - (b) Direct dealing, bypassing the designated union or employer bargaining agent
 - (c) Individual employment contracts
 - (d) Unilateral Changes
 - (1) After contract expiration – duty to continue economic terms absent agreement, valid impasse or loss of majority status
 - (2) Mid-term modifications – past practice, management rights, waiver, zipper clauses
 - (e) Mid-term Section 8(d) violations – clear meaning of contract – consent required for change
 - (f) Request to bargain
 - (g) Indicia of bad faith – Totality of the circumstances
 - (1) Uncompromising attitude
 - (2) Dilatory and evasive tactics – failure and refusal to meet at reasonable times and places and for reasonable duration
 - (3) Refusal to make concessions
 - (4) Regressive bargaining
 - (5) Injecting new proposals as agreement becomes imminent

- (6) Premature declaration of impasse
- (7) Failure to provide information needed for bargaining
- (8) Unilateral Changes
- (9) Lack of authority of bargaining representative
- (10) Unilateral imposition of arbitrary ground rules
- (11) Insistence to impasse on non-mandatory subject of bargaining
- (12) Away from the table conduct
- (h) Subject matter of collective bargaining
 - (1) Mandatory subjects of bargaining
 - (2) First National Maintenance – core entrepreneurial decision? driven by labor costs? Amenable to resolution through labor negotiations? partial closings
 - (3) Subcontracting, layoffs, removal of work from unit
 - (4) Non-mandatory bargaining subjects
 - (5) Illegal subjects
- (i) Extension of certification year - Mar-Jac Poultry, 136 NLRB 785; expedited treatment of technical 8(a)(5) cases – 14 days from charge to complaint, etc. OM 04-25.
- (i) Majority Status without an Election - Gissel bargaining orders – GC 99-8
 - (1) Appropriate unit
 - (2) Demand for recognition and request to bargain
 - (3) Majority status – compare cards, etc. with payroll and personnel records. Authenticate signatures.
 - (4) Hallmark violations? Fair election unlikely?
 - (5) Trading Port – 8(a)(1)(3) bargaining order
- (j) Reneging on card check – Snow and Sons
- (k) Withdrawal of recognition based on alleged loss of majority status – Levitz Furniture - GC 09-04
- (l) Construction industry 8(a)(5) charges - 8(f) v. 9(a) contracts – OM 04-83.
- (m) Duty to furnish information
 - (1) Bargaining information
 - (2) Financial information – duty triggered by claim of inability to pay
 - (3) Contract enforcement – determine basis to file or prosecute grievance
 - (4) Presumptively relevant information
 - (5) Burden of establishing relevance of information regarding non-unit employees
 - (6) Liberal, discovery-type standard
 - (7) Delay
 - (8) Customer information, names and addresses of witnesses, witness statements, investigative reports, EEO information, striker replacement information
 - (9) Manner and form of information provided
 - (10) Confidentiality and privilege defenses; redaction
 - (11) Postal Service cases – OM 03-18
- (n) Economic Pressure During Bargaining
 - (1) Impasse – Implementation of terms consistent with final offer
 - (2) Lockouts
 - (3) Strikes – economic strikes v. ulp strikes, permanent and temporary replacements
- (o) Successorship

- (1) Alter ego v. Single employer
- (2) Burns successors – substantial continuation of the business and the work force; majority status
- (3) Demand for recognition and bargaining; continuing demand.
- (4) Perfectly clear successors
- (5) Effect of hiatus
- (6) Golden State successor – obligation to remedy ulps of predecessor
- (7) Discriminatory refusal to hire predecessor employees
- 3. Section 8(b)(1)(B) - Restraint or coercion of employers in selection of bargaining representatives
 - (a) Refusal to negotiate in presence of employer's authorized representative
 - (b) Other forms of restraint and coercion

B. Representation Cases: The trainee will study and may receive assignments in the following area.

- 1. Post-Election Issues
 - (a) Administrative Investigation of Challenges and/or Objections
 - (b) Prima facie evidence and parties' positions
 - (c) Administrative determination or hearing – OM 04-26.
 - (d) Preparation of Report or Notice of Hearing
 - (e) Role of Regional Director's representative in post-election hearing
 - (f) Role of Hearing Officer in post-election hearing
 - (g) The critical period and "laboratory" conditions
 - (h) Notice posting requirements
 - (i) Excelsior list requirements
 - (j) Peerless Plywood rule
 - (k) Milchem issues
 - (l) Forged documents
 - (m) Savair issues
 - (n) Appeals to racial prejudice
 - (o) Pro-union conduct of supervisors
 - (p) Third party conduct v. party conduct

Evaluation and Certification

At the end of the second year, the supervisor completes the second annual appraisal of the trainee and makes a recommendation regarding retention in the program and, where appropriate, promotion. At the end of the third year, the supervisor completes the third annual appraisal of the trainee. Based upon an evaluation of the trainee's performance and college course work, the Regional Director will make a recommendation to the Associate General Counsel, Division of Operations-Management, regarding conversion and, where appropriate, promotion. A determination will be made by the Associate General Counsel, Division of Operations- Management, of the trainee's readiness for conversion to the target position and, where appropriate, promotion.

APPRAISAL OF POTENTIAL BASED ON JOB ELEMENTS

Target Position: Labor Management Relations Examiner, GS-244-7

Name of Applicant		Region		
Job Title	Rating of Candidate's Qualifications (Check Appropriate Box)			
Grade	Not Demonstrated	Acceptable	Above Average	Outstanding
1. Has ability to research information				
2. Communicates effectively in writing				
3. Gains acceptance of recommendations				
4. Makes clear and persuasive oral presentations				
5. Adaptability, especially ability to adjust to changes in policies and procedures				
6. Is timely in the completion of assignments				
7. Possesses good analytical ability				
8. Is industrious				
9. Is able to process a number and variety of assignments in an effective manner				

Additional Comments:

 Signature and Date (Rater)

National Labor Relations Board
Bridge Program Application
for Labor Management Relations Examiner

Name	Job Title	Region	Grade
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I hereby apply for the National Labor Relations Board Bridge Program for Labor Management Relations Examiner position, General Schedule Positions GS-4, 5, 6, and 7.

I acknowledge that in order to allow for promotions during the Bridge Program, and because the nature of the Bridge Program precludes a final determination as to my conversion until completion of the entire program, all promotions during the Bridge Program are temporary. Should I fail to meet the standards of the Bridge Program and be returned to my former, or as appropriate, other position, the loss of any temporary promotion received during the program is not an adverse action. However, upon successful completion of the Bridge Program, if I am converted to the target position by reclassification at the same grade, the most recent promotion I received during the program will become permanent. If I am converted to the target position by promotion to a higher grade, such action shall be a permanent promotion.

Signature	Date
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